IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2892 OF 2005

Shri Vijay Narayan Sable,)
Age: 46 years, Occ.: Service,)
R/o. Matruchaya Building,)
Shivaji Nagar, Thane.) ...Petitioner

Versus

1. Smt Ranjana Vijay Sable,)
   Age 35 years, Occ.: -)
   R/o.C/o. Shri Shankar Karke,)
   Adgaon, Taluka Nasik,)
   District Nasik.)

2. Master Pradip Vijay Sable,)
   Minor)

3. Kum.Vishakha Vijay Sable,)
   Minor,

   Respondent Nos.2 and 3 through)
   Respondent No.1.)

   All R/o.C/o.Shri Shankar Karke)
   Adgaon, Taluka Nasik,)
   District Nasik.)

4. The State of Maharashtra) ...Respondents

Shri Kishor Patil for the Petitioner.
Shri Sachin Kadam for the Respondent No.1.
Shri A.S. Shitole, A.P.P for the State.

WITH
CIVIL WRIT PETITION NO.5807 OF 2006

Shri Vijay Narayan Sable,)
Age 48 years, Occ. Service,)
R/o.Room No.30, Old Amrut Chayya)
Building, Shivaji Nagar,)
Wagale Estate, Thane.) ...Petitioner

Versus

Smt Ranjana Vijay Sable,)
Age: 36 years,)

R/o.C/o.Shankar Baluji Karke,)
At & Post Adgaon,)
Taluka & District Nasik.) ...Respondent

Shri Kishor Patil i/by Shri R.M.Haridas for the Petitioner.
Shri Sachin Kadam for the Respondent.

CORAM : ABHAY S. OKA, J.

DATE ON WHICH SUBMISSIONS WERE LASTLY HEARD : OCTOBER 19, 2006.

DATE OF PRONOUNCEMENT OF JUDGMENT : NOVEMBER 20, 2006.

JUDGMENT:

1. These Petitions were heard finally from time to time. After submissions were completely heard, on 13th October, 2006 and on 18th October, 2006, the Petitions were kept in chamber with a view to make efforts for amicable settlement as the dispute is between the husband and wife. The learned Advocates appearing for the contesting parties made best possible efforts for amicable settlement. However, the parties could not agree for amicable settlement and hence, the Petitions are decided on merits.

2. Both the Petitions are filed by the Petitioner-husband. In Criminal Writ Petition, the first Respondent is the wife and the second and the third Respondents are her minor children. In Civil

Writ Petition, only the first Respondent-wife is impleaded as a party. The marriage between the Petitioner and the first Respondent was solemnised in the year 1992. The Petitioner and the first Respondent have a son born in the year 1995 and a daughter born in the year 2001. At present, the son is taking education in English medium school in 5th standard and the daughter is taking education in Kindergarten school.

3. There is a matrimonial dispute between the Petitioner and the first Respondent. At the instance of the first Respondent, the Petitioner and his family members were sought to be prosecuted for offence under section 498-A read with section 34 of the Indian Penal Code. The prosecution has resulted in acquittal.

4. The first Respondent filed an Application in the year 2002 before the Judicial Magistrate (First Class), Ist Court at Nasik under section 125 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the said Code) for grant of maintenance allowance for herself and two minor children. The contention of the first Respondent was that the Petitioner was earning salary of Rs.10,000/- to Rs.12,000/- per month from his employer- the Mumbai

Port Trust. According to the first Respondent, the Petitioner is earning substantial amount of income from his house property. According to the case of the first Respondent, her minor daughter is suffering from an eye ailment for which she constantly requires treatment. According to the first Respondent, she requires substantial amount for education of the children and for her own maintenance. The case of the Petitioner is that all along he has been ready to cohabit with the first Respondent. His case is that it is the first Respondent who is not ready to cohabit with the Petitioner on the ground that she wants a separate residence and she is not desirous of staying with the Petitioner's parents. According to the Petitioner his monthly salary is Rs.9,000/- per month and he has to maintain his parents who are dependent on him. By Judgment and Order dated 15th December, 2004, the learned Judicial Magistrate directed the Petitioner to pay maintenance at the rate of 1,500/- each to the first Respondent and the two minor children from the date of filing Application under section 125 of the said Code. The said order passed under section 125 of the said Code has been confirmed by the Judgment and Order dated 13th October, 2005 by the learned second Adhoc Additional Session Judge, Nasik in a revision Application preferred by the

Petitioner. The Criminal Writ Petition is filed for challenging the said orders.

5. The first Respondent wife also filed Hindu Marriage Petition No.64 of 2002 in the court of Civil Judge, Senior Division at Nasik for restitution of conjugal rights under section 9 of the Hindu Marriage Act, 1955. In the said Petition, the first Respondent applied under section 24 of the said Act of 1955 for grant of interim alimony. By Judgment and Order dated 12th June, 2006 the learned Joint Civil Judge, Senior Division, Nasik allowed the said Application made by the first Respondent at Exhibit 4 and directed the Petitioner to pay sum of Rs.3,000/- per month as a an interim alimony from the date of Application i.e. 30th March, 2002. The learned Judge also directed the Petitioner to pay a sum of Rs.7,000/- on account of expenses of the litigation to the first Respondent.

6. The learned counsel for the Petitioner submitted that even in the year 2006, the take-home salary of the Petitioner is only Rs.2,955/-. He submitted that the Petitioner will have to pay a total amount of Rs.7,500/- per month by way of maintenance under section 125 of the said Code and interim alimony of Rs.3,000/- per month under section 24 of the Hindu

Marriage Act, 1955. He submitted that it is impossible for the Petitioner to pay the said amounts. He pointed out that old parents of the Petitioner are fully dependent on the Petitioner for their survival. He placed reliance on the decision of the Apex Court in the case of **Sanjay Chopra Vs. Sham Chopra (2001 (Supplementary) Bombay Cases Reporter Page 739)**.

7. The learned counsel for the first to third Respondents supported the impugned Judgments and Orders. He pointed out that the gross salary of the Petitioner from his employer- the Mumbai Port Trust is more than Rs.11,000/- and he is earning rental income from his house property. He submitted that the Petitioner has artificially shown certain deductions in his pay-slip. He submitted that the Petitioner's daughter is suffering from eye-ailment since birth and large amount is required for her medical treatment. He submitted that no interference is called for with the reasonable amounts fixed by the courts below. He submitted that the children are growing and therefore, there is bound to be enormous increase in the expenditure on the education of children.

8. I have considered the submissions. While deciding the Application under section 125 of the said

Code, the learned Magistrate held that the gross salary of the Petitioner is more than Rs.11,000/- per month. Considering the gross salary, the learned Judge fixed maintenance amount at the rate of Rs.1,500/- each for the first Respondent and two children. While dismissing the Revision Application filed by the Petitioner against the said order, in paragraph No.11, the learned Adhoc Additional Sessions Judge has observed that there is a little dispute about the quantum of maintenance awarded by the learned Magistrate. The learned Adhoc Additional Sessions Judge could not have taken into consideration the order of interim alimony passed in Hindu Marriage Petition in as much as the Application under section 24 made by the first Respondent was decided subsequently. In order dated 12th June, 2006 passed by the learned Joint Civil Judge, Senior Division passed under section 24 of the Hindu Marriage Act, 1955 he has not at all considered the effect of the order passed in Application under section 125 of the said Code though the said order is specifically referred to while reproducing the contentions in the reply filed by the Petitioner to the Application under section 24 of the Hindu Marriage Act, 1955. Therefore, the question which is required to be decided is whether both the orders can be maintained.

9. In these Petitions, the Petitioner has placed on record a copy of wage slip of the Petitioner for month of July 2006. The wage slip shows that the gross earning per month of the Petitioner is Rs.10,177.79/-. The deductions which are shown in the wage slip are as under:

1.	P.F.	Rs. 859.00
2.	V.P.F.	Rs.1,000.00
3.	E.T.	Rs. 200.00
4.	SSS	Rs. 625.60
5.	BDWC	Rs.1,968.00
6.	Housing Loan	Rs.1,970.00
7.	FA REP	Rs. 600.00

That is how the wage slip shows gross deductions of Rs.7222.60/-. It is obvious that most of the deductions cannot be taken into consideration for deciding the amount of maintenance. While considering the income, at highest, there can be a deduction of instalments paid towards housing loan of Rs.1,970/- per month.

10. There is nothing on record to show that the first Respondent has any source of income. There appears to be material on record to show that the

daughter is suffering from eye ailment and she needs constant treatment. The son is taking education in an English medium school in fifth standard. Considering the requirements of the children and the income of the Petitioner from salary, it is difficult to find fault with the maintenance amount of Rs.4,500/- fixed by the learned Magistrate under section 125 of the said Code. Infact, in the impugned order dated 13th October, 2005 by which Revision Application of the Petitioner was rejected, there is a specific finding recorded by the learned Adhoc Additional Sessions Judge that there is a little dispute about the quantum of maintenance. So far as neglect on the part of the Petitioner to maintain first Respondent and children is concerned, there are concurrent findings recorded by the courts below. Therefore, no interference is called for with the order under section 125 of the said Code.

11. While passing the order on Application under section 24 of the Hindu Marriage Act, 1955, the learned Civil Judge has not taken into consideration the quantum of maintenance awarded under section 125 of the said Code. While fixing the quantum of interim alimony, the learned Civil Judge ought to have considered the amount fixed under section 125 of the said Code. He should have considered whether the

first Respondent and children are entitled to an amount over and above the amount fixed under section 125 of the said Code considering the income of the Petitioner. The standard of living of the wife and children must be also consistent to the standard of living of the husband. While deciding the Application under section 125 of the said Code, the learned Magistrate has recorded a finding that apart from income from salary, the Petitioner is holding joint family property and is earning the income of rent of the house property. However, there is no finding that a particular amount is being received by way of income from the property by the Petitioner. The learned Joint Civil Judge, Senior Division has not at all considered the case of the first Respondent as regards income received by the Petitioner from the house property. Moreover, there is no consideration of the fact that an order under section 125 of the said Code has been already passed against the Petitioner. Moreover, the learned Judge has not considered the income, if any, received by the Petitioner from the house property. Therefore, the said Application under section 24 of the said Act of 1955 will have to be remanded for fresh consideration. However, the order for payment of litigation expenses will have to be maintained.

12. Hence, I pass the following order:

(i) Criminal Writ Petition No.2892 of 2005 is rejected.

(ii) Clause No.2 of the impugned order dated 12th June, 2006 below Application at Exhibit 4 in Hindu Marriage Petition No.64 of 2002 is quashed and set aside and the said Application at Exhibit 4 is remanded to the court of the Joint Civil Judge, Senior Division, Nasik for fresh consideration of prayer for grant of interim alimony.

(iii) It will be open for the parties to produce further evidence by way affidavits and/or documents as regards the income of the Petitioner by way of salary and the income allegedly received by him from immovable property.

(iv) It is made clear that clause No.3 of the Order dated 12th June, 2006 is confirmed.

(v) The learned Joint Civil Judge, Senior

Division, Nasik will decide the Application at Exhibit 4 in so far as prayer for interim alimony is concerned afresh after considering the evidence which is already on record and after considering further material which may be placed on record by both the parties.

(vi) The Application will be decided in the light of the observations made in this Judgment as expeditiously as possible and preferably on or before 31st March, 2007.

(vii) Civil Writ Petition No.5807 of 2006 is accordingly partly allowed in above terms.

(viii) The Petitioner is directed to pay a sum of Rs.8,000/- to the first Respondent being legal expenses of these two Writ Petitions. The amount shall be paid to the first Respondent or deposited in the court of the learned Joint Civil Judge, Senior Division, Nasik within a period of six weeks from today.

(ix) Parties and the concerned court to act on an authenticated copy of this order.

(x) Usual writ to be sent immediately.

JUDGE